

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DARIEN HOUSER, ) 16-cv-1039  
                    )  
Plaintiff,         ) **ELECTRONICALLY FILED**  
                    )  
v.                    )  
                    )  
WETZEL, et al.,    )  
Defendants.        )

**MEMORANDUM ORDER ADOPTING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION (DOC. NO. 92)**

This prisoner civil rights suit was commenced on July 14, 2016 with the submission of a complaint and a petition to proceed *in forma pauperis* and was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrate Judges Act, [28 U.S.C. § 636\(b\)\(1\)](#), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges. The case was administratively closed pending payment of the initial partial filing fee. Payment of the partial filing fee was received on November 8, 2016, and the case was reopened. ([Doc. No. 20](#)). A delay ensued again during which time the U.S. Marshal was effectuating service on the approximately twenty-five (25) named defendants.

In January of 2017, Defendants Diamond Pharmacy and Allegheny General filed motions to dismiss and the DOC Defendants filed a motion for more definite statement. By Order of February 1, 2017, the Magistrate Judge granted the motion for more definite statement and ordered Plaintiff to file an amended complaint which complies with [Federal Rules of Civil Procedure 8, 11, and 20](#) by March 7, 2017. The motions to dismiss were denied without prejudice.

On March 8, 2017, Plaintiff's Amended Complaint was filed.<sup>1</sup> ([Doc. No. 56](#)). On March 28, 2017, America Service Group, Diamond Pharmacy, and Allegheny General filed Motions to Dismiss. (Doc. Nos. 65, 67, and 69). On May 2, 2017, Plaintiff filed an Omnibus Response to these motions ([Doc. No. 80](#)).

Upon the completion of briefing, the magistrate judge filed a Report and Recommendation ("R&R") recommending that the three motions to dismiss be granted and Plaintiff not be granted leave to amend as it would be futile. ([Doc. No. 92](#)). Plaintiff filed timely objections to the report and recommendation ([Doc. No. 95](#)), to which Defendant America Service Group filed a Reply Brief. ([Doc. No. 106](#)).

Where, as here, objections have been filed, the court is required to make a *de novo* determination about those portions of the R&R to which objections were made. *See 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b)*. The district court may accept, reject, or modify the recommended disposition, as well as receive further evidence or return the matter to the magistrate judge with instructions.

The Court finds that Plaintiff's objections do not undermine the recommendation of the Magistrate Judge. Plaintiff raises several objections, none of which require additional comment. Plaintiff's objections are nothing more than a restatement of his "legal" conclusions, which were discussed and soundly rejected in the R&R. The Magistrate Judge thoroughly analyzed each of Plaintiff's claims against these three Defendants and explained in detail why Plaintiff's claims could not survive the motions to dismiss.

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<sup>1</sup> In the Amended Complaint, Plaintiff added five additional defendants: Manufacturer of Lubrisoft Lotion / Major Pharmaceuticals; Manufacturer of Rugby Anti Dandruff Shampoo / Rugby Laboratories; DOC Chief Medical Director, Mr. Hice, and Mail Room Supervisor D. Geehring.

After *de novo* review of the pleadings and documents in this case, together with the report and recommendation, and the Objections thereto, the Court finds that the report and recommendation should be adopted as the opinion the Court. Accordingly, it is **ORDERED** as follows:

1. The Motion to Dismiss, Or In The Alternative, Motion for More Definite Statement Pursuant to Rule 12(e) filed by Defendant America Service Group, Inc. (ECF No. 65) is **GRANTED**. Defendant America Service Group, Inc. is hereby dismissed with prejudice.
2. The Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6) filed by Defendant Diamond Pharmacy Services ([Doc. No. 67](#)) is **GRANTED**. Defendant Diamond Pharmacy Services is hereby dismissed with prejudice.
3. The Motion to Dismiss Plaintiff's Amended Complaint filed by Allegheny General Hospital ([Doc. No. 69](#)) is **GRANTED**. Defendant Allegheny General Hospital is hereby dismissed with prejudice.

It is further **ORDERED** that the Report and Recommendation ([Doc. No. 92](#)) is **ADOPTED** as the Opinion of the Court.

This matter is referred back to Magistrate Judge Eddy for all further pretrial proceedings.

**SO ORDERED** this 22nd day of June, 2017.

s/Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

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